

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEWART ABRAMSON, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

THE LAWSUIT AUTHORITY LLC,
KWOK DANIEL LTD. LLP, and
DOES 1 through 10, inclusive, and each
of them,

Defendants.

Case No. 2:21-cv-00275-PLD

**DEFENDANTS THE LAWSUIT AUTHORITY LLC AND KWOK DANIEL LTD LLP'S
MOTION TO DISMISS**

NOW COME Defendants The Lawsuit Authority LLC and Kwok Daniel LTD LLP (“Defendants”), by and through their undersigned counsel, and respectfully move this Court for dismissal of the Class Action Complaint (*see* Dkt. 1, “Complaint”) filed by Stewart Abramson (“Plaintiff”) in this matter, in its entirety and with prejudice, for the following reasons:

First, this Court should dismiss Plaintiff’s Complaint pursuant to Fed.R.Civ.P. 12(b)(2), on the grounds that this Court lacks personal jurisdiction over either Defendants.

Second, this Court should dismiss Plaintiff’s Complaint for lack of venue under Fed.R.Civ.P. 12(b)(3) or in the alternative, transfer it to the Southern District of Texas pursuant to 28 U.S.C. § 1404(a).

Third, this Court should dismiss the Complaint under Fed.R.Civ.P. 12(b)(1), on the grounds that Plaintiff cannot meet at least two of the requirements for Article III standing—

specifically, causation and redressability. In this regard, Plaintiff does not plead sufficient facts tracing the alleged unlawful conduct or his alleged harm to any act or omission by Defendants, and Defendants cannot redress harm caused by unknown third parties. In addition, Plaintiff cannot meet the \$5 million amount in controversy statutory requirement for jurisdiction under 28 U.S.C. § 1332(d)(2).

Finally, this Court should dismiss the Complaint for failure to state a claim upon which relief can be granted under Fed.R.Civ.P. 12(b)(6) because Plaintiff fails to allege sufficient facts to support a claim under the Telephone Consumer Protection Act (“TCPA”). In particular, Plaintiff does not plead any facts suggesting Defendants (i) took any “steps to physically” initiate or send the at-issue text message, as required for direct TCPA liability, nor (ii) regarding the existence of an agency relationship whereby Defendants exercised control over any responsible third parties who sent such a message, as required for vicarious TCPA liability. The connection between Defendants and the text message at issue is tenuous at best. Such threadbare allegations do not satisfy federal pleadings standards. Furthermore, Plaintiff’s Complaint is also devoid of any facts supporting Plaintiff’s allegations that the text message at issue was sent using an automatic telephone dialing system (“ATDS”) under § 227(b) of the TCPA. Instead, Plaintiff merely employs conclusory allegations without supporting facts, which are insufficient to survive dismissal under Fed.R.Civ.P. 12(b)(6).

A proposed order dismissing the Complaint, with prejudice, is attached hereto.

WHEREFORE, for the foregoing reasons and those set forth in Defendants’ accompanying Brief in Support, Defendants respectfully request that the Court grant the instant Motion, and dismiss Plaintiff’s Complaint with prejudice.

Respectfully submitted,

CLARK HILL PLC

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* Pending *Pro Hac Vice* Admission

Attorneys for Defendants,

The Lawsuit Authority LLC and

Kwok Daniel Ltd, L.L.P.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **DEFENDANTS THE LAWSUIT AUTHORITY LLC AND KWOK DANIEL LTD LLP'S MOTION TO DISMISS** has been forwarded via electronic filing on this 19th day of April, 2021, to all counsel of record as follows:

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/s/Samuel A. Hornak
Samuel A. Hornak